



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
EARLE F. BRUCKER, JR.,

Appearances:

For Appellant: Earle F. Brucker, Jr., in pro. per.

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Earle F. Brucker, Jr., against proposed assessments of personal income tax in the amounts of \$82.06, \$239.60 and \$155.28 for the years 1948, 1949 and 1950, respectively.

The tax is measured by wages earned by Appellant outside of California and the sole question before us is whether during the years 1948, 1949 and 1950 he was a resident of California so as to subject the out-of-state earnings to the California personal income tax.

The circumstances were as follows:

1. Appellant was born in California in 1925 and lived with his parents until he reached his majority in 1946, except for a period when he was in the armed services.

2. Appellant's father was employed over the years by various out-of-state professional baseball clubs. From 1940 to 1949, inclusive, his father was employed by the Philadelphia Athletics. The family, including Appellant, lived outside of California during the baseball season but maintained a home in San Diego, California.

3. In 1943, Appellant registered with a Philadelphia draft board and was drafted while there in 1944. Upon his discharge in 1946 he returned to Philadelphia and received his discharge unemployment payments there. On his application for such payments he listed his home address as Shibe Park, Pennsylvania, the baseball park of the Philadelphia Athletics. His home address at the time of his entry into service was listed on his discharge form as his family's home in San Diego, California, and his

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civilian mailing address at the time of his discharge as in care of the Philadelphia Athletics Ball Club at Shibe Park.

4. Appellant attended and graduated from a San Diego high school in 1944. However, during the periods his father was employed out of state, Appellant attended high schools at the out-of-state locations.

5. After his return from military service in 1946, Appellant enrolled at the San Diego State College and attended regularly throughout 1948, the fall terms of 1949, 1950, 1952, 1953 and 1954 and the spring term of 1955. His registration home address was at all of these times given by him as San Diego.

6. During the years 1948 through 1954 Appellant played for several out-of-state baseball clubs and traveled about, living in various rented quarters during his employment. Except for the year 1951, however, he attended the San Diego State College in the off seasons.

7. In 1951 Appellant married a California girl and purchased a home in San Diego where he resided at least through 1955.

8. Since completing college in 1955 Appellant has been employed in and been a permanent resident of San Diego and its suburbs,,

9. Appellant did not register to vote in any state during the relevant years but did register his cars in California.

10. Bank checking accounts were maintained where Appellant was employed and beginning in 1949 a savings account was kept in San Diego.

11. Federal income tax returns for 1948, 1949 and 1950 were filed by Appellant in California under a San Diego address.

12. Taxes measured by the income at issue were paid to the City of Philadelphia but the record does not show whether the income was taxed on the basis of the residence of Appellant in that city or because the income was earned there.

For the years 1948 through 1950, Section 17013 (now 17014) of the Revenue and Taxation Code provided that:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

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(b) Every individual domiciled within this State who is in some other state, territory or country for a temporary or transitory purpose,

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Respondent's regulation 17013-17015(d) (now 17014-17016(d)) stated that "The domicil of a minor.. ordinarily is that of its father, ..." and the federal law provided that for purposes of taxing income a person shall not be deemed to have lost a residence or domicile in any state solely by reason of being absent in the military service. (Section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 App. U.S.C.A. § 574.)

We have held that Appellant's father was domiciled in and was a resident of California during Appellant's minority (Appeal of Earl F. Brucker, Cal. St. Bd. of Equal., July 18, 1961, 3 CCH Cal. Tax Cas. Par. 201-806, 3 P-H State & Local Tax Serv. Cal. Par. 58205), and as a consequence, in the absence of evidence to the contrary, Appellant must also be regarded as having been domiciled in California up to the time he reached his majority in 1946. In order for Appellant to have subsequently lost his California domicile, it is necessary that he have (1) left the state without any intention of returning and (2) located elsewhere with the intention of remaining there indefinitely. (Estate of Peters, 24 Cal. App. 75 [12 P.2d 118]; Chapman v. Superior Court, 162 Cal. App. 2d 421 [328 P.2d 231].)

For the following reasons, it is our opinion that Appellant's absences from California were for temporary or transitory purposes only and that he did not at any time relinquish his original California domicile by locating in another state with the intention of remaining there permanently:

1. Except for his military service, Appellant's absences from California were all in connection with seasonal work.

2. Appellant had no dwelling place of any permanency outside of California.

3. With only two exceptions, Appellant at all times listed California addresses when preparing official documents such as school and car registrations and federal income tax returns. The exceptions were when he listed the baseball park of the Philadelphia Athletics on papers connected with his service discharge and this was obviously not a residence address,

4. Before, between and after his out-of-state engagements Appellant lived in California and attended a college here.

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5. At all times since his last out-of-state baseball engagement Appellant has remained in California,

We accordingly find that Appellant was a resident of California during 1948, 1949 and 1950 and that there was no error on the part of Respondent in issuing the proposed assessments of personal income tax.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED: pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Earle F. Brucker, Jr., against proposed assessments of personal income tax in the amount: of \$82.06, \$239.60 and \$155.28 for the years 1948, 1949 and 1950, respectively, be and the same is hereby sustained.

Done at Sacramento, California-, this 19th day of December, 1962 by the State Board of Equalization.

_____, Chairman

John W. Lynch _____, Member

Paul R. Leake _____, Member

Richard Nevins _____, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary